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**Appeal, and request for Expedited Relief, to the Federal
Communications Commission on behalf of Screven County
School District**


April 26, 2003

96-45

Secretary
Office of the Secretary
Federal Communications Commission
445 -12th Street, S W , Rm TW-204B
Washington, D C 20554

This is an appeal from a decision by the Schools and Libraries Division of the USAC.

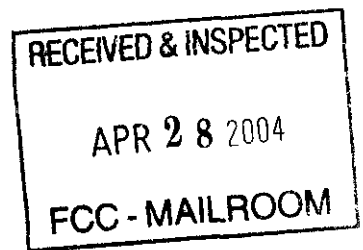
Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed.
Please time stamp the extra copy and return it to me in the enclosed self addressed-
stamped envelope.



Nathaniel Hawthorne
Attorney for Screven County School District

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)	File No. SLD -
)	
Appeal of the Decision of the)	
)	
Universal Service Administrator by)	
the)	
)	
Screven County School District)	
)	
)	
)	CC Docket No. 96 - 45
Federal-State Joint Board on)	
Universal Service)	
Changes to the Board of Directors of)	
The National Exchange Carrier)	
Association, Inc.)	CC Docket No. 97 - 21

**Appeal
and
Request for Expedited Relief
on behalf of the
Screven County School District**

April 26, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an appeal from a decision by the Schools and Libraries Division of the USAC.
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(1) **Funding Commitment Decision Letter Appealed**

Form 471 Application Number:	358859
Funding Year 2003	07/01/2003-06/30/2004
Billed Entity Number:	127343
Date of Funding Denial Notice:	April 13, 2004
Date of Appeal:	April 26, 2004

(2) **Funding Request Number Appealed**

FRN –1029583

(3) **SLD's Reason for Funding Denial**

The SLD stated that funding is denied because:

“30% or more of this FRN includes a request for a Wide Area Network which is an ineligible product/service based on program rules.”

(4) **The “30% rule” was incorrectly applied by the SLD.**

- a) The Screven County School District (Screven) prepared and timely filed a FCC Form 471 for Internet Access service with ANS Connect, Inc. as the vendor.
- b) The SLD did not go through a Program Integrity Process (PIA) for the district.

- c) The SLD, *sua sponte*, changed the classification from “basic conduit access” (Internet Access) to Internal Connections, and then applying the so-called “30% rule”, denied the district’s Application.
- d) The FCC’s 30% rule provides, *in relevant part*, “[if] 30% or more of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services (including services for ineligible entities or uses), the PIA team will deny the entire Block 5 funding request, even if eligible components are part of the request. If less than 30% of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services, the PIA team will reduce the request by the cost of the ineligible components, and the Funding Commitment Decision Letter will cite the ineligible services for which funds were not committed. If the request is reduced, applicants and service providers must ensure that the SLD is not invoiced for the ineligible items. [emphasis added.]
- e) If the FCC’s 30% rule is unclear, then we should look at the SLD’s rule on this issue. The SLD’s Rule provides as follows:

“Processing of Funding Requests Containing Ineligible Products and Services (The ‘30% Rule’)

Applicants should be sure that they include only eligible products and services in their Form 471 Block 5 funding requests. If services to be delivered include both eligible and ineligible components, applicants must subtract the ineligible costs using Item 23B and/or Item 23G of their Block 5 funding requests.

The SLD's Program Integrity Assurance (PIA) Team reviews all Forms 471 to ensure that funds are being requested only for eligible products and services. If an applicant includes ineligible products and services in a Block 5 funding request, the entire request may be jeopardized

The SLD has developed the "30% Rule" to more efficiently process the large number of applications under the Schools and Libraries Support Mechanism, especially because demand for funding generally exceeds the funding available.

- If 30% or more of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services (including services for ineligible entities or uses), the PIA team will deny the entire Block 5 funding request, even if eligible components are part of the request.
- If less than 30% of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services, the PIA team will reduce the request by the cost of the ineligible components, and the Funding Commitment Decision Letter will cite the ineligible services for which funds were not committed. If the request is reduced, applicants and service providers must ensure that the SLD is not invoiced for the ineligible items."

f) "Ineligible charges" are defined as expenses for ineligible services, *e.g.*, voice mail and phones. *See, Oversight of the Universal Service Fund, as prepared by the Federal Office of the Inspector General, Pg 11.*

g) After a review of the SLD's Eligible Services List, dated October 10, 2003 at page 9, it is apparent that:

"Internet access, regardless of technology platform, is eligible for discount. Such access may include transport of digital communication using any Internet-based protocols, including encapsulation of data, video, or voice so long as this is the most cost effective way to access the Internet. In addition, features that are not themselves eligible, such as caching and filtering, can be included if an integral component part of the service. ."

and at page 12:

"A wide area network is a voice, data, and/or video network that provides connections from within an eligible school or library to other locations beyond the school or library. An integrated information service that provides Internet Access through a Wide Area Network may be eligible for funding as Internet access if that offering is the most cost effective means of accessing the Internet." [emphases added]

h) The SLD's Wide Area Network (WAN) Fact Sheet provides, inter alia, that

"SLD program rules provide that the actual wires that carry data across public rights-of-way and the components located outside a school or library facility are WAN components and are evaluated for eligibility under Telecommunications Services and Internet Access." [emphases added]

And the SLD's rules further provide an illustration:

"Assume that the computers of a school district and library system are connected among the various buildings in order to share access to the Internet. The connections between buildings are leased from a non-telecommunications provider such as a cable company, and are the most cost-effective means of accessing the Internet. The cost of leasing the connections is eligible for discounts as Internet Access." [emphases added]
<http://www.sl.universalservice.org/reference/wan.asp#1>

While ANS Connect, Inc is neither a "cable company nor a telecommunications carrier", it does **NOT** have to be one in order to provide Internet Access. See Eligible Services List at page 9, where it provides that "Service Providers for Internet Access need not be a eligible telecommunications provider."


Based on the facts of this Application, there is no reasonable regulatory basis for the denial. The 30% rule is inapplicable; and, since the SLD did not conduct a PIA to gather facts for the denial, the denial is not supportable on the record. Moreover, Item 21 (the attachment to the FCC Form 471) did not have any ineligible services listed that would support the SLD's decision to disallow the request.

Conclusion:

Screven is Requesting the Following Action by the FCC:

- (a) Within 90 days or less Order funding for Internet Access service requested in the 471 Application, specifically FRN -1029583**
- (b) Set aside funds to totally fund Screven's request.**

Respectfully submitted,


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